

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

1330 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036-1795

PHOENIX, ARIZONA
TWO RENAISSANCE SQUARE

TELEPHONE: (602) 257-5200
FACSIMILE: (602) 257-5299

ALFRED M. MAMLET
(202) 429-6205

(202) 429-3000
FACSIMILE: (202) 429-3902
TELEX: 89-2503

STEPTOE & JOHNSON INTERNATIONAL
AFFILIATE IN MOSCOW, RUSSIA

TELEPHONE: (011-7-501) 258-5250
FACSIMILE: (011-7-501) 258-5251

May 21, 1996

DOCKET FILE COPY ORIGINAL

VIA HAND DELIVERY

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
Room #222
1919 M Street, N.W.
Washington, DC 20554

RECEIVED

MAY 21 1996

RECEIVED
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**Re: In the Matter of Amendment of the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems
IB Docket No. 95-41**

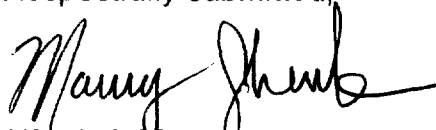
Dear Mr. Caton:

Enclosed please find for filing on behalf of Motorola Satellite Communications, Inc. an original and five copies of Motorola's Opposition To Petition Of COMSAT Corporation For Partial Reconsideration And Immediate Interim Relief

Also, enclosed please find one copy of this filing to be date stamped and returned with our messenger.

If there are any questions concerning this filing, please do not hesitate to contact me.

Respectfully submitted,



Alfred M. Mamlet
Maury D. Shenk
Counsel for Motorola Satellite
Communication, Inc.

Enclosures

044

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

RECEIVED
MAY 1 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:

**Amendment of the Commission's
Regulatory Policies Governing Domestic
Fixed Satellites and Separate
International Satellite Systems**

IB Docket No. 95-41

**OPPOSITION TO PETITION OF COMSAT CORPORATION
FOR PARTIAL RECONSIDERATION AND
IMMEDIATE INTERIM RELIEF**

Pursuant to Section 1.429(f) of the Commission's rules, 47 C.F.R. § 1.429(f), Motorola Satellite Communications, Inc. ("Motorola") files this opposition to the Petition of COMSAT Corporation for Partial Reconsideration and Immediate Interim Relief.^{1/} COMSAT seeks interim authorization to provide Intelsat and Inmarsat services in the United States. The Commission should deny COMSAT's petition and consider this issue instead in the recently-initiated DISCO-II rulemaking^{2/} because (1) the Commission's DISCO-I Order^{3/} properly treats Intelsat and Inmarsat like other

^{1/} Motorola takes no position on the petitions for reconsideration filed in this rulemaking by Columbia Communications Corporation, Orion Network Systems, Inc., and PanAmSat Corporation.

^{2/} See Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, IB Docket No. 96-111 (May 14, 1996) ("DISCO-II NPRM")

^{3/} Amendment of the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, 11 FCC Rcd 2429 (1996) ("DISCO-I Order").

non-U.S.-licensed satellite systems; (2) the DISCO-I Order is consistent with the Commission's regulation of COMSAT as the exclusive provider of Intelsat and Inmarsat services; and (3) the record in DISCO-I provides an insufficient basis for resolving the market access issues raised by COMSAT, while the DISCO-II rulemaking will address these issues in detail.

I. THE DISCO-I ORDER DOES NOT TREAT COMSAT'S INTELSAT AND INMARSAT SERVICES IN A DISCRIMINATORY MANNER

COMSAT repeatedly contends in its Petition that the DISCO-I Order improperly discriminates against COMSAT's Intelsat and Inmarsat services by not according them the same treatment that it accords to the services of U.S.-licensed domestic fixed satellite systems ("domsats") and international separate systems. This contention is simply wrong, because Intelsat and Inmarsat are obviously not U.S.-licensed satellite systems.

The DISCO-I Order "adopt[s] a policy that permits all U.S.-licensed fixed satellite service ('FSS') systems, mobile satellite service ('MSS') systems, and direct-broadcast satellite service ('DBS') systems to offer both domestic and international services."^{4/} The DISCO-I Order deferred consideration of access to the U.S. market by non-U.S.-licensed satellite systems. This separate treatment of U.S.-licensed and non-U.S.-licensed satellite systems is entirely consistent with the Commission's authority under section 308 of the Communications Act of 1934 to control foreign access to the U.S. market.

The DISCO-I Order is manifestly non-discriminatory: it treats COMSAT's Intelsat and Inmarsat services exactly like the services of any other U.S. company that

^{4/} DISCO-I Order, 11 FCC Rcd at 2429 (emphasis supplied).

seeks to provide services over a non-U.S.-licensed satellite system. Likewise, any COMSAT service over a U.S.-licensed satellite system -- such as the domsat services that COMSAT is authorized to provide through its COMSAT General Corporation subsidiary -- are treated under the DISCO-I Order "just like any other non-Intelsat, U.S.-licensed satellites."^{5/}

What would be discriminatory would be for COMSAT to be the only U.S. satellite services provider permitted to provide unrestricted U.S. domestic services over a non-U.S.-licensed satellite system pending the outcome of DISCO-II. Such a policy, which is what COMSAT is seeking in its petition for reconsideration, would be particularly unfair because of the market power of Intelsat and Inmarsat and because of COMSAT's exclusive statutory privileges with respect to those multilateral satellite systems.

II. THE DISCO-I ORDER IS CONSISTENT WITH THE COMMISSION'S REGULATION OF COMSAT AS THE EXCLUSIVE PROVIDER OF INTELSAT AND INMARSAT SERVICES

COMSAT argues in its petition for reconsideration that "the DISCO-I Order severely handicaps COMSAT's ability to serve customers efficiently in a highly competitive telecommunications market."^{6/} To the contrary, COMSAT remains a privileged and powerful participant in the satellite services market.

^{5/} Amendment of the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, 10 FCC Rcd 7789, 7797 (1995) ("DISCO-I NPRM"); see also Comsat General Corporation, 8 FCC Rcd 5621 (1993) (authorizing relocation of SBS-3 domsat and offering of certain SBS-3 services on non-common carrier basis).

^{6/} COMSAT Petition, at 4.

COMSAT is the exclusive U.S. signatory of Intelsat and Inmarsat under the Communications Satellite Act and the Maritime Satellite Act.^{7/} Intelsat and Inmarsat exercise substantial market power in the international FSS and MSS markets, in which they are by far the dominant players^{8/}; and the DISCO-I Order does not alter this situation.^{9/} Accordingly, as the exclusive U.S. signatory to Intelsat and Inmarsat, COMSAT has extremely important advantages available to no other U.S. company.

Because of the market power of Intelsat and Inmarsat, the Commission has generally barred COMSAT from providing domestic Intelsat and Inmarsat services. Although the Commission has given COMSAT case-by-case authorization, where appropriate, to provide domestic Intelsat services^{10/} and Inmarsat services,^{11/} it has emphasized that the domestic role for these services should be limited. For example, in the AMSC Order, the Commission stated:

^{7/} See Communications Satellite Act of 1962, § 102(c), Pub. L. 87-624, 76 Stat. 419 (1962) ("participation in the global [communications satellite] system shall be in the form of a private corporation . . . created under this chapter [COMSAT]") (codified at 47 U.S.C. § 701(c)); International Maritime Satellite Communications Act ("Maritime Satellite Act"), § 503(a)(1), Pub. L. 95-564, 92 Stat. 2392 (1978) ("The Communications Satellite Corporation . . . is hereby designated as the sole operating entity of the United States for participation in INMARSAT") (codified as amended at 47 U.S.C. § 752(a)(1)).

^{8/} See DISCO-II NPRM, at ¶ 62 (Intelsat and Inmarsat "have established dominant positions in the global market by virtue of their size and of the fact that, in general, their members are the primary if not exclusive providers of fixed and mobile maritime services in most major national markets.")

^{9/} The Commission specifically concluded that its DISCO-I satellite policy does not pose a substantial risk of technical or significant economic harm to Intelsat. DISCO-I Order, 11 FCC Rcd at 2434 (noting that neither COMSAT nor Intelsat filed comments in response to the tentative conclusions on this issue in the DISCO-I NPRM).

^{10/} See COMSAT Corporation, 1996 FCC LEXIS 1456 (1996) (granting authority to provide service between Maine, Maryland, and Florida as part of an international VSAT network).

^{11/} See American Mobile Satellite Corporation ("AMSC Order"), 7 FCC Rcd 942 (1992) (granting interim authority to provide domestic MSS services over the Inmarsat system until AMSC system is operational).

While future additional domestic uses of Inmarsat might be found to be in the public interest, Inmarsat should not generally be viewed as an option for other interim domestic services within the U.S. while the permanent structure for those services is being developed.^{12/}

Furthermore, as discussed above, the Commission has permitted COMSAT to operate U.S.-licensed FSS systems separate from Intelsat through its COMSAT General Corporation subsidiary. At the same time, the Commission has carefully regulated these activities to ensure that they do not permit COMSAT to improperly exploit the advantages it enjoys as the U.S. signatory of Intelsat.^{13/}

In sum, the DISCO-I Order does not disturb COMSAT's privileged and leading role in international FSS and MSS markets as the exclusive U.S. signatory of Intelsat and Inmarsat, or its right to operate satellite systems that are separate from Intelsat and Inmarsat. Moreover, the order is fully consistent with the Commission's policy of protecting the interests of U.S.-licensed satellite systems (and other telecommunications services providers) by placing appropriate limitations on COMSAT's provision of Intelsat and Inmarsat services in the domestic market.

^{12/} AMSC Order, 7 FCC Rcd at 944; see also COMSAT Corporation, 1996 FCC LEXIS 1456, ¶ 3 ("Our finding that Intelsat satellites may be used to provide domestic service on an incidental basis should not be construed as permitting the provision of purely domestic services via Intelsat satellites.").

^{13/} See, e.g., Communications Satellite Corporation, 90 F.C.C.2d 1205 (1982) (dismissing COMSAT application to construct antennas that would link domsat networks to Intelsat earth stations).

III. THE COMMISSION SHOULD NOT GRANT INTERIM AUTHORIZATION FOR COMSAT TO PROVIDE DOMESTIC INTELSAT AND INMARSAT SERVICES PENDING COMPLETION OF THE DISCO-II RULEMAKING

As COMSAT acknowledges, the Commission's recently-initiated DISCO-II rulemaking is the proper proceeding for resolving the issues of Intelsat and Inmarsat access to the U.S. market.^{14/} In DISCO-II, the Commission has proposed to "adopt a uniform standard to determine whether a non-U.S.-licensed satellite system should be permitted to enter the U.S. satellite services market."^{15/}

The Commission will have a full record in DISCO-II on which to develop a policy on U.S. domestic market entry by Intelsat and Inmarsat. By contrast, the record in DISCO-I is entirely inadequate for addressing this issue. The Notice of Proposed Rulemaking in DISCO-I addressed all issues regarding non-U.S.-licensed satellite systems in a single paragraph, and reached "no tentative conclusion" regarding Intelsat and Inmarsat access to the U.S. domestic market.^{16/} Every commenter in DISCO-I that addressed this issue -- with the lone exception of COMSAT -- agreed that it should be resolved in a separate proceeding.^{17/} Moreover, the DISCO-II NPRM explicitly states that the Commission concluded in DISCO-I that the issues of Intelsat and Inmarsat access to the domestic market "would best be addressed in the context of a review of

^{14/} COMSAT Petition at 1 (requesting relief "pending a decision on general authorization policies in the upcoming DISCO-II rulemaking").

^{15/} DISCO-II NPRM, at ¶ 81.

^{16/} DISCO-I NPRM, 10 FCC Rcd at 7797.

^{17/} See Comments of Motorola Satellite Communications, Inc., at 1-3; Comments of AT&T Corp., at 13-20; Comments of Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc. and Turner Broadcasting System, Inc., at 17-19; Comments of Constellation Communications, at 1-7; Comments of GE American Communications, Inc., at 11-15; Comments of IDB Mobile Communications, Inc., at 1-2; Comments of Loral/Qualcomm Partnership, L.P., at 1-14; Comments of TRW Inc., at 1-3.

Commission policies concerning whether and under what conditions we will permit the use of non-U.S. satellites to serve the U.S. market^{18/} -- i.e., in the DISCO-II rulemaking.

In particular, the record in the DISCO-I rulemaking fails to address several issues that are critical to formulation of the Commission's policy regarding Intelsat and Inmarsat domestic services, including:

- the developing proposals for privatization of Intelsat and Inmarsat;
- the roles of new entrants in the global MSS market, including U.S.-licensed Big LEO systems, Inmarsat-affiliated I-CO Global Communications, and American Mobile Satellite Corporation; and
- the application of the effective competitive opportunities ("ECO") test, first articulated in the Foreign Market Entry Order^{19/} and further elaborated in the DISCO-II NPRM, to the satellite market.

Each of these issues is squarely raised in the DISCO-II NPRM, and commenters and the Commission will have the opportunity to address them fully in DISCO-II.

In view of the limited record in DISCO-I and the fact that the DISCO-II rulemaking has already commenced, it is plainly inappropriate for the Commission to grant the interim relief requested in COMSAT's petition for reconsideration. By doing so, the Commission would be reversing longstanding policy without an adequate record to support this significant policy change.

Furthermore, as discussed above, COMSAT has significant market power as the exclusive U.S. signatory of Intelsat and Inmarsat. If the Commission were to fail to defer resolution of the issues raised by COMSAT to the DISCO-II rulemaking, it would permit COMSAT to begin exercising this market power in the U.S. domestic

^{18/} DISCO-II NPRM, at ¶ 63.

^{19/} Market Entry and Regulation of Foreign-Affiliated Entities, IB Docket No. 95-22 (Nov. 30, 1995).

market, with effects that are uncertain from the record in this proceeding and that could be very difficult to reverse in DISCO-II.

Finally, the issue of Inmarsat domestic services is also before the Commission in two COMSAT applications which COMSAT does not mention in the present petition for reconsideration.^{20/} These applications raise the exact issues that the Commission has stated that it will resolve in the DISCO-II rulemaking.^{21/} While the DISCO-II NPRM proposes that applications filed prior to the issuance of the NPRM will not be governed by the DISCO-II standard,^{22/} COMSAT's applications are not ripe for consideration now, for at least three important reasons. **First**, the same principles underlying the DISCO-II "ECO-Sat" test were raised as public interest considerations by Motorola and other parties in their filings regarding COMSAT's two applications. Therefore, these public interest issues must be resolved before ruling on COMSAT's applications. **Second**, the Commission should not reverse its general prohibition on Inmarsat domestic services without addressing the important issues raised in DISCO-II. **Third**, while COMSAT has agreed to modify its domestic service in accordance with the rules and policies developed in DISCO-II,^{23/} it would be practically difficult to reverse grant of COMSAT's applications in order to bring COMSAT into compliance with those rules and policies.

^{20/} See COMSAT Corporation, File No. ITC-95-341 (Inmarsat-1 and Inmarsat-2 domestic services application); COMSAT Corporation, File No. ITC-95-422 (Inmarsat-3 services application).

^{21/} See DISCO-II NPRM, at ¶¶ 63, 65-68.

^{22/} DISCO-II NPRM, at ¶ 20.

^{23/} COMSAT Petition, at 1-2 n.3 ("COMSAT expressly agrees that it will modify or adjust its provision of domestic service upon completion of the DISCO-II phase of this proceeding to conform to any rules or policies adopted therein").

In sum, there is no basis for granting COMSAT interim authority to provide Intelsat and Inmarsat domestic services pending development of a full record in the DISCO-II rulemaking.

IV. CONCLUSION

For the above reasons, Motorola requests that the Commission deny COMSAT's Petition for Partial Reconsideration and Immediate Interim Relief.

Dated: May 21, 1996

Respectfully submitted,

**MOTOROLA SATELLITE
COMMUNICATIONS, INC.**



**Michael D. Kennedy
Vice President and Director
Regulatory Affairs
Barry Lambergman, Manager
Satellite Regulatory Affairs
MOTOROLA, INC.
1350 I Street, N.W.
Washington, DC 20005
(202) 371-6900**

**Philip L. Malet
Alfred M. Mamlet
Maury D. Shenk
STEPTOE & JOHNSON
1330 Connecticut Ave., N.W.
Washington, DC 20036
(202) 429-3000**

Its Attorneys

CERTIFICATE OF SERVICE

I, Thomasina P. Rivera, hereby certify that the foregoing **Motorola's Opposition To Petition Of COMSAT Corporation For Partial Reconsideration And Immediate Relief** was served, via first class mail (except where indicated), postage prepaid, this 21st day of May, 1996, on the following:

- * Chairman Reed E. Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

- * Commissioner James H. Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

- * Commissioner Rachelle B. Chong
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

- * Commissioner Susan B. Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

* Via Hand Delivery

* Donald Gips, Chief
International Bureau
Federal Communications Commission
Room 800, Stop Code 0800
2000 M Street, N.W.
Washington, DC 20554

* James Ball, Associate Bureau Chief
Office of the Bureau Chief
International Bureau
Federal Communications Commission
Room 800, Stop Code 0800
2000 M Street, N.W.
Washington, DC 20554

* Olga Madruga-Forti
International Bureau
Federal Communications Commission
Room 800, Stop Code 0800
2000 M Street, N.W.
Washington, DC 20554

* John P. Stern
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Richard E. Wiley
Lawrence W. Secrest, II
William B. Baker
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
(Counsel for COMSAT Corporation and COMSAT International Communications)

* Via Hand Delivery

Howard D. Polsky
Keith H. Fagan
Neal T. Kilminster
COMSAT Corporation
COMSAT International Communications
6560 Rock Spring Drive
Bethesda, Maryland 20817

Norman P. Leventhal, Esq.
Raul R. Rodriguez, Esq.
Stephen D. Baruch
David S. Keir
Leventhal, Senter & Lerman
Suite 600
2000 K Street, N.W.
Washington, D.C. 20006-1809
(*Counsel for TRW Inc. and Columbia Communications Corporation*)

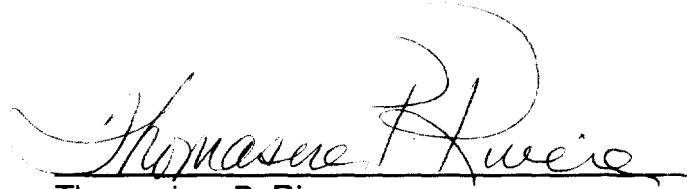
Thomas J. Keller
Eric T. Werner
Verner, Lipfert, Bernhard, McPherson & Hand
901 - 15th Street, N.W.
Suite 700.
Washington, D.C. 20005-2301
(*Counsel for Orion Network Systems, Inc.*)

Peter Hadinger, Esq.
Space & Electronics Group
TRW Inc.
Suite 800
1101 19th Street, North
Arlington, VA 22209

Daniel S. Goldberg
Goldberg, Godles, Wiener & Wright
1229 Nineteenth Street, N.W.
Washington, D.C. 20036
(*Counsel for PanAmSat*)

* Via Hand Delivery

* International Transcription Service
Suite 140
1919 M Street, N.W.
Washington, DC 20036



Thomasina P. Rivera

* Via Hand Delivery